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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,434	05/04/2001	Jay K. Sheerer	10-1340	8624

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NIXON & VANDERHYE, PC  
1100 N GLEBE ROAD  
8TH FLOOR  
ARLINGTON, VA 22201-4714

[REDACTED] EXAMINER

ALVO, MARC S

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1731

DATE MAILED: 03/11/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/848,434	SHEERER, JAY K.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steve Alvo	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 December 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 22-32 is/are pending in the application.
- 4a) Of the above claim(s) 27-32 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 22-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
  1. Certified copies of the priority documents have been received.  
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
  a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The restriction requirement of Paper No. 2 is repeated and made Final. Newly submitted claims 27-32 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 22-26, drawn to a vertical vessel, classified in class 162, subclass 251.
- II. Claims 27-32, drawn to a digester in combination with a screen, classified in class 162, subclass 251.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the “hollow region of said vessel”. The subcombination has separate utility such as vessel for bleaching paper pulp.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution

on the merits. Accordingly, claims 27-32 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 22-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "said horizontal plane is substantially hollow" is indefinite as the hollow plane contains the protrusions and is not "hollow".

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHNYDER. or CANADIAN PATENT APPLICATION 2,243,733 in view of RICH. SCHNYDER. (5, 21) or CANADIAN PATENT APPLICATION 2,243,733 (Figures 7B 16A and 16B) teaches continuous annular protrusions connected to an internal section of a vessel

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each protrusion having a triangular cross section. The surface of SCHNYDER is a screening surface, or CANADIAN PATENT APPLICATION 2,243,733 teaches that the continuous surface can be a screening surface (page 9, lines 27-28). RICH teaches using a screening surface having a space from the vessel surface of  $\frac{3}{4}$  to 2 inches (column 3, lines 54-57). It would have been obvious to structure the screens of SCHNYDER. (5, 21) or CANADIAN PATENT APPLICATION 2,243,733 (Figure 7B) to the depth taught by RICH. It is noted that CANADIAN PATENT APPLICATION 2,243,733 that the design allows for “column relief”, page 7, lines 18-23. The claimed read protrusions on the screens of SCHYNDER, which protrude into the vessel and are hollow in the interior surface of the screens. The screens are attached to the interior surface of the vessel on their external surface.

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over CANADIAN PATENT APPLICATION 2,243,733 with or without RICH.

CANADIAN PATENT APPLICATION 2,243,733 (Figures 3, 16A and 16B) teaches continuous annular protrusions connected to an internal section of a vessel each protrusion having a triangular cross section. The CANADIAN PATENT APPLICATION 2,243,733 teaches using impervious protrusions 53, 122, 40 (Figure 3) and 84, Figures 16A and 16B, which extend into the vessel at locations offset from the screens in portions of the vessel that are hollow. The CANADIAN PATENT also teaches that these protrusion typically extend 6 inches into the vessel (page 2, line 14). It would have been obvious to the artisan that the step-out protrusions of CANADIAN PATENT APPLICATION 2,243,733 would be 6 inches as such is typical in the art. The CANADIAN PATENT APPLICATION 2,243,733 teaches such a design allows for “column relief”, page 7, lines 18-23. If necessary, RICH teaches using a screening

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surface having a space from the vessel surface of  $\frac{3}{4}$  to 2 inches (column 3, lines 54-57). It would have been obvious to structure the protrusions of the CANADIAN PATENT APPLICATION 2,243,733 (Figures 3 and 16 A and B) to the depth taught by RICH so they correspond to the depth of the screens (43) in the CANADIAN PATENT.

Claims 22-26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JOHANSON

See JOHANSON Figures 8 and 9, Figure 5 and column 4, lines 45-52, wherein the protrusion (32) has a triangular cross section and extends into the vessel 8 inches, e.g. the width of the base (32) in Figure 5. Any difference in the shape or size of the protrusion of JOHANSON would have been an obvious modification based on the type and size of the material being treated.

Applicant has argued that the protrusions of the CANADIAN PATENT are not impervious. The drawings show protrusions 53, 122, 40 (Figure 3) and 84, Figures 16A and 16B as solid lines, which would indicate that they are impervious. The screens are porous, e.g. screen (43) of Figure 3, but not the protrusions. Similarly, the plates of JOHANSEN are attached to the vertical wall of the vessel and are non-porous.

The protrusions in SCHNYDER are porous and thus the amendment has overcome SHNYDER as a reference.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the **primary examiner** should be directed to **Steve Alvo** whose telephone number is (703) 308-2048. The Examiner can normally be reached on Monday - Friday from 6:00 AM - 2:30 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Steve Griffin, can be reached on 703-308-1164.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Group receptionist** whose telephone number is 703-308-0661.

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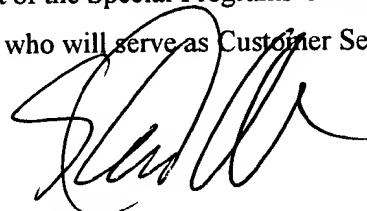
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**STEVE ALVO  
PRIMARY EXAMINER  
ART UNIT 1731**

MSA  
3/9/03